

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Rural Call Completion)	WC Docket No. 13-39
)	

**USTELECOM – THE BROADBAND ASSOCIATION
PETITION FOR STAY**

Pursuant to Sections 1.43 of the rules of the Federal Communications Commission (Commission),¹ USTelecom – the Broadband Association (USTelecom)² respectfully petitions the Commission to stay limited aspects of its Rural Call Completion (2nd RCC Order).³ USTelecom continues to support efforts to ensure that rural call completion issues are fully, timely and efficiently resolved, and recently filed comments in the Commission’s ongoing rural call completion rulemaking proceeding (RCC Notice) that identified ways to further enhance the Commission’s existing framework.⁴

USTelecom supports the 2nd RCC Order’s requirement that each covered provider (“Covered Provider”)⁵ monitor the performance of the intermediate providers (“Intermediate

¹ 47 C.F.R. § 1.43.

² USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets.

³ Second Report and Order and Third Further Notice of Proposed Rulemaking, *Rural Call Completion*, FCC 18-45 (April 17, 2018) (for citation purposes, USTelecom refers to the Second Report and Order as the “2nd RCC Order” and the third further notice of proposed rulemaking portion of the item as the “RCC Notice”).

⁴ See, Comments of USTelecom – the Broadband Association, WC Docket No. 13-39 (submitted June 4, 2018) (*USTelecom Comments*).

⁵ See, 2nd RCC Order, ¶ 6.

Providers”)⁶ with which it contracts and take steps to correct performance failures, and supports the Commission’s goal of resolving call completion problems to rural areas. However, the industry and consumers would be better served by a stay of the 2nd RCC Order’s Covered Provider monitoring requirements during the pendency of the RCC Notice.⁷ We discuss these areas below and respectfully request the Commission grant the stay its 2nd RCC Order consistent with this petition.⁸

I. Petition for Stay of Section 64.2111.

Section 64.2111 of the Commission’s rules requires Covered Providers to monitor the performance of each Intermediate Provider with which it contracts, and to take corrective action when an Intermediate Provider fails to perform. The Commission should stay Section 64.2111 of its rules until the effective date of rules governing Intermediate Providers adopted in response to the RCC Notice.

The Commission has substantial discretion in granting a stay and may stay an order where doing so is “equitable and will serve the public interest.”⁹ The Commission typically exercises that discretion in light of the familiar four-factor test applied by both the Commission and the courts. “[N]o single factor is necessarily dispositive,”¹⁰ and the Commission may grant a

⁶ *Id.*, ¶ 3.

⁷ *Id.*, Appendix B, § 64.211; *id.* paras. 34 – 35.

⁸ Concurrent with this Petition for Stay, USTelecom has also filed a Petition for Reconsideration in this proceeding. *See*, Petition for Reconsideration, USTelecom – the Broadband Association, WC Docket No. 13-39 (filed June 11, 2018).

⁹ *Tennis Channel, Inc. v. Comcast Cable Commcn 's, LLC*, 27 FCC Red 5613, 5616 ii 5 (2012); *see also* 5 U.S.C. § 705 (providing that an agency may grant a stay pending judicial review when it “finds that justice so requires.”).

¹⁰ *In re AT&T Corp. v. Ameritech Corp.*, 13 FCC Red 14508, 14515-16 (1998); *see also In re Comcast Cable Commcn 's, LLC*, 20 FCC Red 8217, 8217-18 2 (MB 2005) (explaining that the degree to which any one factor must favor a stay “will vary according to the Commission's

stay where a petitioner makes a strong showing as to at least one of the factors, even if there is no showing on another.¹¹ That accepted test asks the following:

1) Has the petitioner made a strong showing that it is likely to prevail on the merits of its appeal? 2) Has the petitioner shown that without such relief, it will be irreparably injured? 3) Would the issuance of a stay substantially harm other parties interested in the proceedings? 4) Where lies the public interest? This petition for stay satisfies the above test for the following reasons:

A. Absent Grant of the Stay, Petitioner Will be Irreparably Injured

Petitioner will be irreparably injured absent grant of the requested stay. As it is currently structured, the Commission's monitoring rule will go into effect on October 17, 2018,¹² regardless of whether the Commission has adopted obligations for Intermediate Providers. As addressed in USTelecom's comments submitted in response to the RCC Notice,¹³ it is unrealistic and counterproductive for the Commission to mandate monitoring requirements for non-safe harbor providers by an arbitrary date before it has established the registration, self-monitoring and service quality standards for Intermediate Providers.

The Commission established its initial 6 month transition period after acknowledging that

assessment of the other factors.”).

¹¹ “The four factors have typically been evaluated on a ‘sliding scale.’ If the movant makes an unusually strong showing on one of the factors, then it does not necessarily have to make as strong a showing on another factor.” *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1291-92 (D.C. Cir. 2009) (quoting *Davenport v. Int’l Bhd. of Teamsters*, 166 F.3d 356, 361, 334 U.S. App. D.C. 228 (D.C. Cir. 1999)). See also *Washington Metro Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977) (*Washington Metro*); *Iowa Utils. Bd. v. FCC*, 109 F.3d 418, 423 (8th Cir. 1996).

¹² See, 2nd RCC Order, ¶ 50 (the Commission's monitoring rule went into effect six months from the date that its order was released by the Commission, or 30 days after publication of a summary of the order in the Federal Register, whichever is later).

¹³ USTelecom Comments, pp. 7 – 10.

“covered providers will need some time to evaluate and renegotiate contracts with Intermediate Providers in order to comply with the monitoring requirement.”¹⁴ However, those same contracts cannot be renegotiated or amended until all the parties have an understanding of the service quality standards for which Intermediate Providers must monitor. The RCC Act and the Commission’s RCC Notice make clear that proposed service quality standards may be very specifically delineated, or may be implemented through a more general adoption of duties. To ensure that the contracts governing their relationships with Intermediate Providers are appropriately amended, non-safe harbor providers must know whether to amend their contracts to account for specific service quality standards (assuming they have the ability to monitor based on those yet to be determined standards, which they may not), or whether the delineation of more general practices may suffice.

In addition, the Commission has not yet identified which entities will be required to register as Intermediate Providers. Non-safe harbor Covered Providers have no idea which of their contracts need to be evaluated or renegotiated. Depending on how narrowly or broadly the Commission defines Intermediate Providers, the number of contracts that will need to be renegotiated will vary. Given the uncertainty surrounding each of these issues, it would be highly disruptive and burdensome for non-safe harbor providers to renegotiate contracts for terms they do not yet know, with parties who the Commission has not yet identified.

Absent a stay, Covered Providers will unnecessarily be forced to incur the cost of renegotiating their vendor contracts multiple times, or be placed in a position where they risk Commission action for noncompliance with 64.2111 while they wait for the Commission to act on the RCC Notice. These costs, which need not be incurred, could potentially result in higher

¹⁴ 2nd RCC Order, ¶ 50.

rates for end users.

B. Issuance of the Requested Stay Will Not Substantially Harm Other Parties in the Proceeding

A stay will not harm any party in this proceeding. Indeed, USTelecom maintains that the broader calling ecosystem will benefit from grant of the stay. Given the pendency of core issues raised in this petition and in the RCC Notice, the broader universe of both Covered and Intermediate Providers will benefit from a more streamlined and efficient introduction of the Commission's rural call completion framework.

Specifically, if the Commission chooses to adopt proposals that would subject Intermediate Providers to the same set of monitoring standards that Covered Providers are under the 2nd RCC Order, the benefits of the Covered Provider's obligation to modify vendor contracts will be de minimis, at best. Each provider, Intermediate and Covered (including Covered Providers operating under the non-safe harbor framework), will already be subject to the obligation to use registered providers, monitor their vendors, and address rural call completion issues.

Indeed, aligning provider obligations in such a manner will not only benefit both categories of providers, but it is also logical from an administrative efficiency perspective. Given that many of USTelecom's members – along with others in the voice industry – are both Covered Providers and Intermediate Providers, with their designation changing from call to call, it would be unduly burdensome to adopt different rules for Intermediate Providers. There is additional justification for this approach since many providers (whether Intermediate or Covered), use the same networks and vendors for their wholesale and retail customers.

Given that this is an open question in the Commission's current RCC Notice, grant of the requested stay would introduce greater certainty and administrative efficiency for all categories

of providers. Through grant of the stay, non-safe harbor providers would not need to commit the significant resources necessary to modify their existing contracts in the months ahead, until such time as the Commission decides whether to adopt the same set of monitoring obligations for both Covered Providers and Intermediate Providers.

C. Granting the Petition for Stay is in the Public Interest

The balance of the public interest strongly favors a stay of § 64.2111 of the Commission's rules. As discussed above, a stay will provide greater certainty and integrity to overall rural call completion efforts. In addition, a temporary stay while the RCC Notice remains pending is particularly warranted here because, while imposing the monitoring obligations on non-safe harbor providers will create immediate harm and uncertainty, there is no imminent threat to other parties that makes this new obligation necessary.¹⁵ Indeed, if carriers are forced to incur necessary costs, or intermediate carriers decide the cost of compliance outweighs their continued participation in this market, consumers will be harmed by increased rates.

This seems particularly unnecessary in light of the fact that rural call completion complaints continue to fall. In its 2nd RCC Order, the Commission notes that complaints about rural call completion filed by rural carriers with the Enforcement Bureau decreased by about 15 percent from 2016 to 2017, following a decrease of 45 percent from 2015 to 2016.¹⁶ Thus, staying for a short time § 64.2111 of the Commission's rules would risk no third-party harm and would instead promote the public interest in stability and predictability for all relevant stakeholders.

¹⁵ See, e.g., *Washington Metro.*, 559 F.2d at 843 (granting stay when agency had not found that maintaining status quo would be contrary to the public interest).

¹⁶ 2nd RCC Order, ¶ 9.

II. Conclusion

For the foregoing reasons, the Commission should grant USTelecom's petition for stay.

Respectfully submitted,

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